UNITED STATES DISTRICT COURT

IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

MONSURU TIJANI,

Plaintiff,

vs.

LOU BLANAS and DEPUTY DUNCAN BROWN,

Defendants.

CASE NO. **2:00-CV-00069-RRB-EFB**

~~[PROPOSED]~~
**ORDER ON DEFENDANTS' RULE 50 MOTION FOR JUDGMENT AS A MATTER OF LAW**

At the pretrial conference attended by Plaintiff, in pro per, and counsel for Defendants, on March 14, 2007, Plaintiff voluntarily dismissed defendant Deputy Duncan Brown, based upon his self declared lack of evidence to support a claim of violation of his constitutional rights by Defendant Brown. Defendant Duncan Brown was then dismissed by Court order.

At the next pretrial conference in this matter on March 15, 2007, Plaintiff indicated that he would be his only witness at trial. Defendant then proposed to Plaintiff and the Court that the parties stipulate to consider a Rule 50 motion for judgment as a matter of law, and that the case proceed on an offer of proof by Plaintiff to the Court. The Court could then determine whether Plaintiff had sufficient evidence to support his remaining claims against the sole defendant, Lou

Blanas, and proceed to a jury trial.[1]

Pursuant to Rule 50 of the Federal Rules of Civil Procedure, the court is permitted to take a case away from the jury by entering a judgment if there is not sufficient evidence to raise a genuine factual controversy. Rule 50 states that a motion for judgment as a matter of law may be brought after a party has been fully heard on an issue during a jury trial. In this case, the more appropriate motion by Defendant may have been a motion for summary judgment under Rule 56, which is brought prior to trial. However, the prerequisites for, and effect of summary judgment pursuant to Rule 56 is the same as judgements as a matter of law entered under Rule 50. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986)(noting that summary judgment standard "mirrors the standard for a directed verdict under Federal Rule of civil Procedure 50(a), which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict"). Both motions test the sufficiency of evidence and whether a reasonable jury could return a verdict in favor of the nonmoving party. The difference between the motions is that of timing; Rule 56 motions being brought prior to trial to determine whether there is any need to convene a trial, and Rule 50 motions being brought typically after presentation of the Plaintiff's case, to determine whether there is any need for the trial to continue to jury deliberation. See Commentary to Rule 56, Baicker-McKee, Janssen and Corr, Federal Civil Rules Handbook, 2007, Thomson/West.

The Court explained the procedure to Plaintiff, that Plaintiff would be permitted to present to the Court all the evidence that he would be presenting to the jury, and the Court would then determine the sufficiency of the evidence and whether Plaintiff had enough evidence to proceed to trial.[2] The Court informed Plaintiff that if he did not have sufficient evidence, his

---

[1]The court also has inherent power to sua sponte dismiss a complaint where it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989) ("a complaint, containing as it does both factual allegations and legal conclusions, is frivolous [under 1915(d)] where it lacks an arguable basis either in law or in fact"). See also, Denton v. Hernandez, 504 U.S. 25, 31-32 (1992).

[2]The sufficiency of the evidence is an issue of law to be determined by the judge. Lange v. Penn Mut. Life Ins. Co., 843 F.2d 1175, 1181 (9th Cir. 1988). The court must view all evidence in the light most favorable to the party opposing the motion. Cobb v. Pozzi, 363 F.3d 89, 101( 2d Cir. 2004)(essentially, the standard for a Rule 50 motion is

case would be dismissed. Plaintiff agreed to permit the Court to entertain a Rule 50 motion for judgment without empaneling a jury and make an offer of proof to the Court for determination pursuant to Defendant's motion for judgment as a matter of law. The case at this time was proceeding only on Plaintiff's claims against Defendant Lou Blanas in his individual and official capacities for violation of Plaintiff's constitutional rights under the Fourteenth Amendment to the Constitution as a pretrial detainee on October 7, 1998.

By offer of proof, Plaintiff presented his case to the Court and stated in summary as follows: Plaintiff was housed in the 4 West 300 pod of the Main Jail in October of 1998, as a pretrial detainee. Plaintiff had been incarcerated and served time on two previous occasions. During the early morning hours of October 7, 1998, at approximately 1:15 a.m., a cell search or "shakedown" was conducted in the 4 West 300 pod. The temperature outside in the exercise yard where all inmates were taken while their cells were searched, was approximately 50-52 degrees Fahrenheit. Plaintiff alleges that the conditions under which he was held in the exercise yard during the search of the cells, and the strip search which occurred at that time, caused him to remain naked for 45 minutes at cold temperatures, with his arms raised, while monitored by Deputies with firearms. Plaintiff also alleged that he was hit in the back with a hard object while outside during the search, although he does not know who did so, or with what he was allegedly struck. Plaintiff did not report to Jail Health Services any injuries to his back as a result of this allegation. Plaintiff never told medical staff he was hit in the back with an object. Plaintiff states that as a result of this incident, he has problems with people in uniform. Plaintiff claims this event violated his Constitutional Rights.

The Court confirmed by two subsequent requests during the course of this hearing, that Plaintiff had no additional evidence to present in support of his claims.

Defendant Lou Blanas was not Sheriff of Sacramento County until February of 1999. However, by previous admission, Lou Blanas is deemed to have been Sheriff of Sacramento

---

the same as the standard for a summary judgment motion under Rule 56).

County at the time of Plaintiff's complaint for the purposes of a Monell claim against the County of Sacramento. Defendant offered that Lou Blanas had no personal involvement in the shakedown on October 7, 1998, and Plaintiff offered no evidence to the contrary.

Plaintiff had no evidence to present to the Court to support his claim against Sheriff Blanas individually. For an official to be liable in his individual capacity, the plaintiff must show that the official "set in motion a series of acts by others, or knowingly refused to terminate a series of acts by others, which he knew or reasonably should have known, would cause others to inflict the constitutional injury" allegedly sustained by the plaintiff. Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991). In a section 1983 action, "supervisory officials are not liable for actions of subordinates on any theory of vicarious liability." Hansen v. Black, 885 F.2d 642, 645-646 (9th Cir. 1989) *citing* Pembaur v. City of Cincinnati, 475 U.S. 469, 479 (1986). In Hansen, the court set forth the circumstances under which a supervisor may be liable as follows: "[a] supervisor may be liable if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." Id. at 646. This is a form of direct liability, and, therefore, plaintiff must prove the individual acted with deliberate indifference. (See Redman v. County of San Diego, 942 F.2d 1435, 1443 (9th Cir. 1991).) Plaintiff had no evidence that Lou Blanas was personally involved in or set in motion any acts which violated Plaintiff's constitutional rights on October 7, 1998, nor that Lou Blanas acquiesced to any such violation subsequent to its occurrence. Therefore, Defendant Lou Blanas cannot be liable in his individual capacity.

When a claim is made against an official of a public entity in his or her official capacity, the claim is simply treated as one against the public entity. Kentucky v. Graham, 473 U.S. 159 (1985). The claim against Defendant Lou Blanas in his official capacity is therefore evaluated as against the County of Sacramento.

A local public entity may only be liable in a Section 1983 action where there is an official policy, custom, or practice of the public entity of deliberate indifference to the rights of

individuals, and as a result thereof, the plaintiff in the particular litigation suffered a deprivation of his rights. Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978). A local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Id. at 694. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983. Id. A municipality cannot be liable under § 1983 simply on the basis of respondeat superior. Id. at 694-95. Under §1983, a municipality can only be held liable if it is shown that:

(1) An agent of the municipality, acting under the color of state law, violated a federal right of the plaintiff. Id.;
(2) There is an affirmative link between the policy and the constitutional violation. City of Oklahoma City v. Tuttle, 471 U.S. 808, 823 (1985); and
(3) The conduct of the policy or decision makers, or the policy itself, must have resulted from a "deliberate indifference" to the rights of the plaintiff.

City of Canton v. Harris, 489 U.S. 378, 385 (1989).

The plaintiff has the burden of establishing "deliberate indifference" to create liability, and:

> "The existence of a policy, without more, is insufficient to trigger local government liability under Section 1983. City of Canton, 486 U.S. [378] 388-389, 109 S.Ct. [1197], 1205 [(1989)]. Under City of Canton, before a local government entity may be held liable for failing to act to preserve a constitutional right, plaintiff must demonstrate that the official policy 'evidences a "deliberate indifference"' to his constitutional rights. [Citation omitted.] This occurs when the need for more of different action is 'so obvious, and the inadequacy of the current procedure is so likely to result in the violation of constitutional rights, that the policy makers...can be reasonably said to have been deliberately indifferent to the need.'" Oviatt by and through Waugh v. Pierce, 954 F.2d 1470, 1477-1478 (9th Cir. 1992).

Plaintiff's lawsuit for violation of his Constitutional Rights falls under the due process clause of the Fourteenth Amendment, for alleged events while he was confined at the Sacramento County Jail as a pretrial detainee awaiting trial for criminal charges of fraud. The due process clause of the Fourteenth Amendment states that, "no state shall deprive any person of life, liberty, or property, without due process of law." Conduct that amounts to "mere negligence" by prison officials is not sufficient to trigger the substantive due process protection

of the Fourteenth Amendment of the U.S. Constitution. Redman, supra, at 1440, citing Daniels v. Williams, 474 U.S. 327, 330-32 (1986). Determination of whether a liberty interest protected by the due process clause has been violated involves a balancing. Redman, supra at 1440. To decide whether a substantive right protected by the due process clause has been violated, it is necessary to balance "the liberty of the individual" and "the demands of an organized society." Id., citing Youngberg v. Romeo, 457 U.S. 307, 320 (1982).

A claim under 42 U.S. C. § 1983 requires the claimant to prove (1) that a person acting under color of state law (2) committed an act that deprived the claimant of some right, privilege, or immunity protected by the Constitution or laws of the United States. Redman v. County of San Diego, 842 F.2d 1435, 1439; Leer v. Murphy, 844 F.2d 628, 632-33 (1988). A person deprives another of a constitutional right, within the meaning of 42 U.S.C. § 1983, if he does an affirmative act, participates in another's affirmative act(s), or omits to perform an act which he is legally required to do that causes the deprivation of which a plaintiff complains. Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988), quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

As a pretrial detainee, Plaintiff cannot be punished through the use of excessive force, prior to adjudication of the charges against him. Graham v. Connor, 490 U.S. 386, 395 n.10 (1989), citing Bell v. Wolfish, 441 U.S. 520, 535-39 (1979). In Bell v. Wolfish, the court stated that the proper standard with respect to pretrial detainees, is to determine whether the conditions to which the plaintiff/inmate was subjected amounted to *punishment* so as to violate the detainee's due process rights, or whether the conditions served a legitimate governmental purpose in ensuring the safety and security of the facility. Bell v. Wolfish, supra at 540.

The government has legitimate interests that stem from its need to manage the correctional facility in which the individual is detained. Id. at 540. The Supreme Court has held that "maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees." Id. at 546. If a particular condition or

restriction of pretrial detention is reasonably related to the institution's interest in maintaining jail security, it does not, without more, amount to punishment. Id. at 547. Within the prison context, the Supreme Court wrote in Resweber that the due process clause is not violated so long as the government conduct is not "repugnant to the conscience of mankind." Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 471-72 (1947) The Estelle court relied upon Resweber in stating that in order to invoke violation of the due process clause of the Fourteenth Amendment, conduct must either be "an unnecessary and wanton infliction of pain" or "repugnant to the conscience of mankind" to be that which is "sufficiently harmful to evidence deliberate indifference." Estelle v. Gamble, 429 U.S. 97, 105-06 (1976).

Prison administrators are to take all necessary steps to ensure the safety of not only the prison staffs and administrative personnel, but also visitors. Hudson v. Palmer, 468 U.S. 517, 527 (1983). They are also under an obligation to take reasonable measures to guarantee the safety of the inmates themselves. Id. The court in Bell has recognized and authorized irregular unannounced shakedown searches of prison cells, including those of pretrial detainees. Bell v. Wolfish, 441 U.S. 520, 555-557 (1979). Prison officials are accorded wide-ranging deference on the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security. Id. at 547; Turner v. Safley, 482 U.S. 78, 89 (1987).

In order to prevail on a claim for violation of due process under the Fourteenth Amendment, a pretrial detainee must establish the defendant acted with deliberate indifference. Redman v. County of San Diego, 942 F.2d 1435, 1443 (9th Cir. 1991). The Redman court stated that the "deliberate indifference" standard "provides an appropriate balance of the pretrial detainees' right to not be punished with the deference given to prison officials to manage the prisons." Id.

Plaintiff's claims stem from a cell and inmate search ("shakedown") at the Sacramento County Main Jail in the early morning hours of October 7, 1998. Plaintiff has the burden to prove by a preponderance of the evidence that the events of which he has complained were

intended by prison officials as, and constituted, punishment rather than being reasonably related to the institution's interest in maintaining jail security and the safety of those within the facility. Turner v. Safley, 482 U.S. 78, 89 (1987). Mere discomfort is not a constitutional violation. Rhodes vs. Chapman, 452 US 337, 347 (1981).

Plaintiff has claimed that the customs, policies or procedures employed by the Sacramento County Sheriff's Department to conduct cell and inmate searches at the Main Jail, through Lou Blanas in his official and/or his individual capacity, amounted to punishment in violation of his due process rights under the Fourteenth Amendment to the United States Constitution. "Deliberate indifference," the standard used to measure violations of the eighth amendment's proscription of cruel and unusual punishment, not only applies to persons whose status permits punishment, but also as to a pretrial detainee who may not be punished. See Redman v. County of San Diego, 942 F.2d 1435, 1442 (9th Cir. 1991).

The requirement that Plaintiff establish the conduct complained of amounts to "deliberate indifference" to his constitutional rights provides the appropriate balance of the pretrial detainee's right not to be punished with the deference which must be given to prison officials to properly and safely manage prisons. Redman at 1443. Plaintiff has the burden of proof to establish that the conduct of which he complains reached the level of punishment and amounted to "deliberate indifference" in order to establish that his rights were violated under the Fourteenth Amendment. Id. The showing of a deprivation is not enough; the Plaintiff must also show that the Defendant knew of the condition in question and through deliberate indifference to the Plaintiff's suffering either, caused it or permitted it to continue. Wilson Seiter, 501 US 294 301-304 (1991).

Deliberate indifference is found when the official is aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw that inference. See Farmer v. Brennan, 511 U.S. 825 (1994). To establish deliberate indifference by Lou Blanas in his official capacity, Plaintiff must prove that Blanas as an official policy-maker, knew that the custom, policy or procedure of which Plaintiff complains

created a substantial likelihood of resulting in the violation of Plaintiff's Constitutional rights, such that it can be reasonably concluded that defendant Blanas deliberately disregarded that risk by failing to take reasonable measures to prevent the violation. See Oviatt, supra. See also, Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991). Plaintiff is also required to establish that such a custom, policy or procedure exists. See City of Canton v. Harris, 489 U.S. 378, 389 (1989). Liability in an official capacity can only be found "if a policy or custom [or one-time decision by a governmentally authorized decision-maker (see Pembaur v. City of Cincinnati, 475 U.S. 469, 481 (1986))]. . .played a part in the violation of federal law," Larez at 646, quoting McRorie v. Shimoda, 795 F.2d 780, 783 (9th Cir. 1986). The defendant charged must be an official policymaker in order for this form of liability to apply. Even if Plaintiff's version of the facts during the shakedown were true, Plaintiff had no evidence of a policy or practice by the Sacramento Sheriff's Department regarding shakedowns which violates the Constitutional rights of the inmates, much less that a policy or practice which did exist violated his Constitutional rights.

Finally, in the case of the City of Oklahoma City v. Tuttle, 471 U.S. 808, 105 S.Ct. 2427, 2436, 85 L.Ed. 2d 791 (1985), the Supreme Court held that it was reversible error to allow a jury to infer from a single event that a unconstitutional policy existed for purposes of imposition of §1983 liability on a public entity. "Proof of a single incident of unconstitutional activity is not sufficient to impose liability under Monell v. Dept. of Social Servs. of the City of New York, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker." Oklahoma City v. Tuttle, supra. See also, Fargo v. San Juan Bautista, 957 F.2d 638, 643 (9th Cir. 1988). In this case, Plaintiff offered no evidence to support his theory that the County of Sacramento has a "policy" with respect to cell searches and "shakedowns" which violates the Constitutional rights of inmates. Even if the facts of the incidents as set forth by Plaintiff are deemed to be true, it is doubtful that first of all his constitutional rights were violated on this occasion, and second, that with nothing more than his

own testimony, that the County of Sacramento has a policy or custom which can be deemed to inflict Constitutional injury on inmates during cell searches or "shakedowns".

Construing all evidence in a light most favorable to Plaintiff, and making all reasonable inferences in Plaintiff's favor, Defendant is entitled to judgment as a matter of law as Plaintiff cannot show that a policy, practice or custom exists pursuant to which his Constitutional rights were violated. No reasonable jury could conclude otherwise.

Therefore, it is hereby ORDERED that judgment be granted in favor of Defendant, and this case be DISMISSED. Each party shall bear its own costs and fees.

Dated: April 17, 2007

THE HONORABLE RALPH R. BEISTLINE
Judge of the United States District Court
For the Eastern District of California